

EAST AYRSHIRE COUNCIL

CENTRAL LOCAL PLANNING COMMITTEE: 17 MAY 2002

**01/0797/FL: PROPOSED ERECTION OF WALL AND FENCE, FORMATION OF
DRIVEWAY AT 2D SAMSON AVENUE, KILMARNOCK
BY MRS L EDWARDS**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 This is a full application for the erection of a driveway, wall and fencing. The driveway is in part retrospective, with the driveway already formed in concrete slabs, however the access crossing has not yet been formed. The wall is 2 metres high and has already been erected on site at the side of the property. The applicant also seeks permission for two sections of a panel timber fence of 1.8 metres in height with a gate to the rear of the property. The applicant has advised of her wish to carry out the fencing to protect her son and garden from her neighbour's animals.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the condition indicated on the attached sheet.

3. CONCLUSIONS

3.1 As indicated in Section 5 of the report there are no applicable policies in the Adopted Kilmarnock Local Plan and therefore greater weight should be attached to the other material considerations.

3.2 The proposal is compatible with Policy ENV4 of the East Ayrshire Local Plan. With regard to the letter of objection the fence which is to be erected is of a standard design, external finish and overall height which is a common feature found in residential areas. It is not visually unattractive and the concerns regarding right of access are not a material planning consideration and should be separately addressed through the legal process. The driveway and wall are viewed as acceptable and are in keeping with the surrounding residential area.

CONTRARY DECISION NOTICE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, it will not require to be referred to the Development Services Committee as there would be no significant breach of Council Policy.

Alan Neish
Head of Planning and Building Control

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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Report by Head of Planning and Building Control

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination, a full planning application which is to be considered by the Local Planning Committee under the scheme of delegation because the proposed development has been the subject of an objection.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site comprises the residential upper flatted property of 2D Samson Avenue and associated garden ground. The site also incorporates an area of communal ground which is jointly owned with the ground floor property at 2B Samson Avenue. The application site is bound to the north and south by other residential properties to the east by the access road into Rosebank nursing home and to the west by Samson Avenue beyond which is an area of public open space.

2.2 **Proposed Development:** This is a full application for the erection of a driveway, wall and fencing. The driveway is in part retrospective, with the driveway already formed in concrete slabs, however the access crossing has not yet been formed. The wall is 2 metres high and has already been erected on site at the side of the property. The applicant also seeks permission for two sections of a panel timber fence of 1.8 metres in height with a gate to the rear of the property. The applicant has advised of her wish to carry out the fencing to protect her son and garden from her neighbour's animals.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The Piersland Bentinck Community Council have not replied to their consultation at the time of writing this report.

Noted.

3.2 The East Ayrshire Council Roads and Transportation Division have no objections subject to the access crossing meeting their guidelines and approval of such works being obtained. They also advise that Scottish Water should be consulted as they have apparatus at this location.

Appropriate advisory notes can be attached to any grant of planning consent advising the applicant of the above comments.

3.3 Scottish Water have not yet responded to their consultation letter at the time of writing this report.

Noted.

4. REPRESENTATIONS

One letter of objection has been received, the points raised are as follows:-

4.1 As advised in previous correspondence, the applicant persists in including areas of land which are in fact communal for 2 B and, 2D Samson Avenue according to the plans registered with the Land Register for Scotland. The applicant is deliberately misleading the Council and has also lied on the plans as the wall has not been on-site for 3 years. It was erected approximately 18 months ago.

The applicant has outlined the application site in red on the submitted plans and has now sent out the appropriate ownership notification as the red line site incorporates communal land. In terms of planning law an applicant seeking planning permission is not required to own or control the site of the proposed development nor obtain the consent of the owner of the land to which the application relates. The applicant is however required to notify the owner of any part of the application site in terms of Section 35 of Town and Country Planning Act 1997. There is a neighbour dispute at this location in respect of land ownership and what areas are communal. Such disputes are civil matters to be resolved privately between the respective owners and are not material planning considerations in the determination of this application.

4.2 The plans state that the applicants will allow access to the gas box which forms part of the lands of 2B Samson Avenue.

As advised in paragraph 4.1 above, this is a land ownership issue and is not a material planning consideration.

4.3 The access has been moved for 2B Samson Avenue. This previously led directly to the rear garden gate for the objectors property and is now offset by approximately 10 inches which in conjunction with the proposed erection of the fences either side of the path, would limit accessibility severely.

The applicant has agreed to delete the fence along one side of the rear access to the objectors back door. Therefore adequate access to the objectors rear property is maintained.

4.4 The proposal to place fences 6 feet in height down either side of the rear access path is purely intended as a means of annoyance. Fencing the garden side of the path as a means of privacy is acceptable. To fence the area to the other side of the path which is a rectangular area, is childish spite and makes access and routine maintenance of the downstairs property difficult. This rectangular area of ground is also likely to be filled with building rubbish.

Following a site inspection by this Division, there has been further negotiation with the applicant who no longer intends to fence along either side of the access and will only erect a fence along the applicants garden side of the path. Such measures adequately address this objection.

4.5 The submitted plans are of no use to anyone and are deliberately presented to allow further abuse of the communal areas. The plans must be more specific and follow the actual ground plans, not to suit the already illegally constructed walls and gate.

There will frequently be variations in the quality of plans submitted, however it is considered that the plans are of sufficient detail to allow the determination of this application.

4.6 The measurements on the plans are given in both imperial and metric units which do not equate one with the other. Neither of these dimensions seem to include any proposed gates further adding to the dimensions.

The proposed fence is to be 7.2 metres in length and under 2 metres in height.

4.7 The access path which runs down the side of the rear garden fence has been conveniently overlooked but it would appear that it is intended to fence this area off. This path is communal and is not for the applicants sole use.

This is a legal matter and is not a material planning consideration. In any case, the applicant does not intend to fence this area and she has confirmed this in writing.

4.8 The driveway extends over a communal area and requires to be returned to its original layout. The wall at the top of the driveway has been left in an unrendered condition and does not match the rest of the building.

The issue concerning land ownership is a legal matter and not material to the determination of this application. The wall has been constructed of breezeblock and painted. It does not match the dwellinghouse but is not visually unattractive and does not detract from the amenity of the area.

5. DEVELOPMENT PLAN STATUS

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application, the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted Kilmarnock Local Plan (1985). The Adopted Local Plan was prepared within the context of the then emerging Strathclyde Structure Plan.

5.2 Notwithstanding the age of the Adopted Local Plan the proposal would fall to be considered against this document and its associated policies. There are however no relevant policies and therefore greater weight should be placed on the 'other material considerations' as identified in Section 6 of this report.

6. ASSESSMENT AGAINST OTHER MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are the East Ayrshire Local Plan Finalised Version with Modifications (EALP), the consultation responses and representation received.

East Ayrshire Local Plan, Finalised Version with Modifications

6.2 The Council has agreed that the EALP should be considered as a prime material consideration. In terms of the EALP the application site is located in a residential area within the settlement boundary of Kilmarnock and the Piersland Park Conservation Area. Policy ENV4 requires that in Conservation Areas, development shall be sympathetic to the setting of that Area.

The proposal is considered not to have an adverse affect on the Conservation Area.

Consultation Replies and Representations Received

6.3 There have been no adverse consultation responses received. The points raised in the letter of objection have been discussed in Section 4 of this report. The fence, wall and gates are not alien features to the existing established residential area and whilst the objections have been noted, these are not considered to be of such significance that would warrant refusal of the application. The concerns raised regarding access are a legal matter and can be addressed through the legal system. Any requirements specified in the title deeds, such as rights of access, do not

preclude the granting of planning permission, neither does the grant of planning permission prevent the exercise of any party's legal rights.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial implications for the Council in the determination of this application.

7.2 Legal implications may arise in the event of the planning application being refused. Enforcement action may be required to seek removal of the retrospective elements of this application.

8. CONCLUSIONS

8.1 As indicated in Section 5 of the report there are no applicable policies in the Adopted Kilmarnock Local Plan and therefore greater weight should be attached to the other material considerations.

8.2 The proposal is compatible with Policy ENV4 of the East Ayrshire Local Plan. With regard to the letter of objection the fence which is to be erected is of a standard design, external finish and overall height which is a common feature found in residential areas. It is not visually unattractive and the concerns regarding right of access are not a material planning consideration and should be separately addressed through the legal process. The driveway and wall are viewed as acceptable and are in keeping with the surrounding residential area.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the condition indicated on the attached sheet.

CONTRARY DECISION NOTICE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning and Building Control, it will not require to be referred to the Development Services Committee as there would be no significant breach of Council Policy.

Alan Neish
Head of Planning and Building Control

7 May 2002
(FMF/MS)
FV/DVM

LIST OF BACKGROUND PAPERS

1. Application form and plans.
2. Statutory Certificates.
3. Consultation Replies.
4. Letter of Objection.
5. Approved Ayrshire Joint Structure Plan.
6. Adopted Kilmarnock Local Plan.
7. East Ayrshire Local Plan Finalised Version with Modifications.
8. Approved Strathclyde Structure Plan.

Anyone wishing to inspect the above background papers should contact Fiona Finlay on 01563 576768.

Implementation Officer: Dave Morris

Form TP24

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

Application No: 01/0797/FL

Location: 2D Samson Avenue
KILMARNOCK

Nature of Proposal: Proposed Erection of Wall, Fence and Driveway

Name & Address of Applicant: Mrs Lorraine Edwards
2D Samson Avenue
KILMARNOCK KA1 3EB

Name & Address of Agent

DPO's Ref: FMF/MS

The above FULL application should be granted subject to the following condition:-

1. The proposed development shall be carried out in accordance with the application form received 25 February 2002 and amended plans received by the Planning Authority on 12 April 2002.

REASON To ensure that development is carried out in accordance with the approved details.

NOTES

1. The applicant is advised to make early contact with the Council's Roads and Transportation Division to ensure that:-
 - an access crossing is provided to meet the guidelines set out by East Ayrshire Council.
 - permission for approval of such works is obtained from the Roads and Transportation Division.
2. The applicant is advised to contact Scottish Water prior to work commencing to confirm that their apparatus will not be affected by the proposals. Scottish Water are based at 35 Glenburn Road, Prestwick, Tel. No: 0808 100 5333.

DUE TO ORDNANCE SURVEY REGULATIONS AND COPYRIGHT

**THE MAP IS AVAILABLE FOR VIEWING AT THE COUNCIL'S
PLANNING OFFICE IN KILMARNOCK. FOR INFORMATION ON
VIEWING PLEASE CONTACT (01563) 576790.**

AGENDA